ESTTA Tracking number:

ESTTA398874 03/18/2011

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050093
Party	Plaintiff Whataburger Partnership LP
Correspondence Address	CHRISTOPHER KELLY WILEY REIN LLP 1776 K STREET NW WASHINGTON, DC 20006 UNITED STATES CKelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
Filer's e-mail	jelgin@wileyrein.com, bcarlton@wileyrein.com, ckelly@wileyrein.com, ameltzer@wileyrein.com
Signature	/JLE/
Date	03/18/2011
Attachments	NOR 3A-Final.pdf (78 pages)(9727270 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

)
)
) Cancellation No.: 92,050093
) Reg. No.: 3,155,106
) Mark: WHAT A PICKLES
)
)
)

Petitioner's Third Notice of Reliance

Pursuant Rule 2.122(e) of the Trademark Rules of Practice, to 37 C.F.R. §

2.122(e), Petitioner WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon the attached notices of opposition and petitions for cancellation, as well as the Board orders terminating such proceedings, from various oppositions and cancellations brought by Petitioner against the registration of confusingly similar WHATA formative marks on the Principal Register. These official records are considered self-authenticating, and as such, require no extrinsic evidence of authenticity as a condition to admissibility.

These materials are relevant to this opposition because, among other things, they demonstrate that Petitioner conducts a vigorous, successful enforcement program to prevent or limit registration of conflicting WHATA formative marks (such as WHATA____; WHATTA____; and WHATA A_____) and the potential dilution of its own WHATA formative marks, including its famous mark WHATABURGER. The successful policing of its marks has added to their strength because it prevents weakening of the marks' distinctiveness in the relevant market.

- The following notices of opposition, petitions for cancellation and the relevant terminating orders from the Board (where appropriate) are attached as Exhibits C-1 through C-13 hereto:
- **Exhibit C-1:** Whataburger Partnership v. What A Pizza What A Price Franchising, LLC, Opp. No. 92052943 (WHAT A PIZZA WHAT A PRICE);
- **Exhibit C-2:** Whataburger Partnership v. Gielow Pickles, Inc., Opp. No. 92050093 (WHAT A PICKLE!);
- **Exhibit C-3:** Whataburger Partnership v. Agroamerica Corporation, Can. No. 92050094 (WATTA);
- **Exhibit C-4:** Whataburger Partnership v. Mahaney, Opp. No. 91186046 (WHATADOG);
- **Exhibit C-5:** Whataburger Partnership v. TBC Investments Inc., Opp. No. 91183490 (WHATTACAKE);
- **Exhibit C-6:** Whataburger Partnership v. Agroamerica Corporation, Opp. No. 91179671 (WATTAFRUIT & Design);
- **Exhibit C-7:** Whatapartnership, L.P. v. Com-Pac International, Inc., Opp. No. 91175612 (WHATABAG);
- **Exhibit C-8:** Whatapartnership, L.P. v. Suite One Staffing Group, Inc., Can. No. 92044859 (WHAT-A-RACK);
- **Exhibit C-9:** *Whatapartnership, L.P. v. Halbro, LLC*, Opp. No. 91166232 (THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS);
- **Exhibit C-10:** *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161459 (WHATTA JERK X-TREME BEEF JERKY);
- **Exhibit C-11:** *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161455 (WHATTA JERK X-TREME BEEF JERKY);
- **Exhibit C-12:** *Whatapartnership, L.P. v. Noret*, Opp. No. 91163686 (CHIHUAHUA "WHAT A SANDWICH"); and
- **Exhibit C-13:** *Whatapartnership, L.P. v. W.A.B. Bakery Franchising Ltd.*, Opp. No. 91161129 (WHAT A BAGEL!).

Respectfully submitted,

WHATABURGER PARTNERSHIP

Bv:

Christopher Kelly Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W. Washington, D.C. 20006 (202) 719-7000

Attorneys for Whataburger Partnership

Dated: March 18, 2011

EXHIBIT C

EXHIBIT C-1

ESTTA Tracking number:

ESTTA364081

Filing date:

08/19/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership	31	
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson, Hugh Do	bson, Lynne Dobs	on
Address	300 Concord Plaza Drive San Antonio, TX 78216 UNITED STATES		

Attorney information	Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W.
	Washington, DC 20006 UNITED STATES
	jelgin@wileyrein.com, bcarlton@wileyrein.com, bdavis@wileyrein.com Phone:202719-7000

Registration Subject to Cancellation

Registration No	3797426	Registration date	06/01/2010
Registrant	WHAT A PIZZA WHAT A PRI P.O. BOX 540 VANCEBURG, KY 41179 UNITED STATES	CE FRANCHISING,	LLC

Goods/Services Subject to Cancellation

Class 030. First Use: 2007/01/31 First Use In Commerce: 2007/01/31 All goods and services in the class are cancelled, namely: PIZZA

Class 035. First Use: 2010/03/19 First Use In Commerce: 2010/03/19

All goods and services in the class are cancelled, namely: FRANCHISING SERVICES, NAMELY, OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF COMMISSARIES, AND IN SUPPLYING PIZZA, PIZZA DOUGH, PIZZA SAUCE, SPICES AND KITS FOR PREPARING PIZZA AT SUPERMARKETS

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)	

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	WHATABURG	ER (Reg. No. 652,137)		
Goods/Services	hamburger sar	hamburger sandwich		
U.S. Application/ Registration No.	NONE	Application Date	NONE	
Registration Date	NONE			
Word Mark	WHATAB⊍RG	WHATABURGER (Reg. No. 891,082)		
Goods/Services	restaurant services and drive in restaurant services			

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHAT	ABUR	GER
Description of Mark	NONE		
Goods/Services	In Commerce: 1972/07/28 SOFT DRINKS	,	rst Use: 1972/07/18 First Use
	Class U046 (International Cla Use In Commerce: 1972/07/2		se: First Use: 1972/07/18 First
	HAMBURGERS, CHEESEBU POTATO CHIPS, CORN CHI SHAKE BEVERAGES, AND	PS,] FRIED PIES, C	NION RINGS, MALT AND
	Class U100 (International Cla In Commerce: 1972/07/28	ss 042). First use: Fi	rst Use; 1972/07/18 First Use
	RESTAURANT AND DRIVE-	IN RESTAURANT SE	ERVICES

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark	THAT AND SER	31 22 33 35 44 44	
Description of Mark	NONE		

Goods/Services	Class U045 (International Cla In Commerce: 1972/07/28 SOFT DRINKS	ass 032). First use: Fi	rst Use: 1972/07/18 First Use	
	Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First			
	Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES			
	Class U100 (International Class U100 (International Class In Commerce: 1972/07/28 RESTAURANT AND DRIVE-	,	rst Use: 1972/07/28 First Use ERVICES	
U.S. Registration No.	1014196	Application Date	11/26/1973	
Registration Date	06/24/1975	Foreign Priority Date	NONE	
Word Mark	WHATABURGER JR.	=N!		
Design Mark				
Description of Mark	NONE			
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES			
U.S. Registration No.	1116918	Application Date	01/20/1978	
Registration Date	04/24/1979	Foreign Priority Date	NONE	
Word Mark	WHATAMEAL		•	
Design Mark				
Description of Mark	NONE			
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES			
U.S. Registration	1206344	Application Date	08/10/1979	
No.				
Registration Date	08/24/1982	Foreign Priority Date	NONE	
Word Mark	WHATACATCH			
Word Mark Design Mark	WHATACATCH			
	WHATACATCH			
Design Mark Description of	NONE Class 029. First use: First Us Breaded Fish Fillets Suitable	for Fish Sandwiches se: 1978/10/14 First U	lse In Commerce: 1979/04/01	

No.			
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use chicken sandwich	e: 1984/01/01 First U	se In Commerce: 1984/01/01
U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		·
	WHATA	BURGER	
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use restaurant services	e: 1950/01/01 First U	se In Commerce: 1953/02/10
U.S. Registration	2372372	Application Date	03/05/1999
No.			
No. Registration Date	08/01/2000	Foreign Priority Date	NONE
Registration Date Word Mark	08/01/2000 WHATAKIDS	-	NONE
Registration Date Word Mark Design Mark	WHATAKIDS WHAT	-	NONE
Registration Date Word Mark	WHATAKIDS	Date	NONE
Registration Date Word Mark Design Mark Description of	WHA'I NONE	Date CAKIDS e: 1998/11/00 First Ushirts, polo shirts, t-:	se In Commerce: 1999/02/15
Registration Date Word Mark Design Mark Description of Mark	WHATAKIDS WHAT NONE Class 025. First use: First Us Clothing for children, namely,	Date CAKIDS e: 1998/11/00 First Ushirts, polo shirts, t-:	se In Commerce: 1999/02/15
Registration Date Word Mark Design Mark Description of Mark Goods/Services U.S. Registration	WHATAKIDS WHAT NONE Class 025. First use: First Us Clothing for children, namely, onesies, baseball caps and h	Date CAKIDS e: 1998/11/00 First U shirts, polo shirts, t-sats	lse In Commerce: 1999/02/15 shirts, dresses, overalls,

Design Mark			
	WHAT	ΓAGU	Y
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		
U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	VX /I	HĀTA1	KINS
	W	HATA]	KIDS
	NONE	HATA	KIDS
Design Mark Description of	NONE		KIDS See In Commerce: 1999/04/01
Design Mark Description of Mark	NONE Class 042. First use: First Us		
Design Mark Description of Mark Goods/Services U.S. Registration	NONE Class 042. First use: First Use restaurant services	e: 1999/04/01 First U	lse In Commerce: 1999/04/01
Design Mark Description of Mark Goods/Services U.S. Registration No. Registration Date Word Mark	NONE Class 042. First use: First Usinestaurant services	e: 1999/04/01 First U Application Date Foreign Priority	lse In Commerce: 1999/04/01 01/02/2001
Design Mark Description of Mark Goods/Services U.S. Registration No. Registration Date	NONE Class 042. First use: First Use restaurant services 2519854 12/18/2001 WHATACOMIX	e: 1999/04/01 First U Application Date Foreign Priority Date	lse In Commerce: 1999/04/01 01/02/2001

Goods/Services	Class 016. First use: First Us	e: 2000/01/01 First U	se In Commerce: 2000/01/01
	comic books and children's activity books		
	0504507	T A 12 12 15 1	00/40/4000
U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATAS	STE!	
Design Mark			
	WHATAPL	ACE! WHA	ATATASTE!
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		
U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER	•	
	*****		CEN
	WHAT	ABUI	RGER
Description of Mark	WHAT	ABUI	RGER
	NONE	se: 2001/10/05 First U	RGER
Mark	NONE Class 036. First use: First Use	se: 2001/10/05 First U	
Mark Goods/Services U.S. Registration	NONE Class 036. First use: First Use Charitable fundraising service	se: 2001/10/05 First U es	lse In Commerce: 2001/10/05
Mark Goods/Services U.S. Registration No.	NONE Class 036. First use: First Use Charitable fundraising service 2846139	se: 2001/10/05 First Ues Application Date Foreign Priority	lse In Commerce: 2001/10/05
Mark Goods/Services U.S. Registration No. Registration Date	NONE Class 036. First use: First Us Charitable fundraising service 2846139 05/25/2004	se: 2001/10/05 First Ues Application Date Foreign Priority	lse In Commerce: 2001/10/05
Mark Goods/Services U.S. Registration No. Registration Date Word Mark	NONE Class 036. First use: First Us Charitable fundraising service 2846139 05/25/2004	se: 2001/10/05 First Ues Application Date Foreign Priority	lse In Commerce: 2001/10/05
Mark Goods/Services U.S. Registration No. Registration Date Word Mark Design Mark Description of	NONE Class 036. First use: First Use Charitable fundraising service 2846139 05/25/2004 WHATABLENDER NONE	Se: 2001/10/05 First Uses Application Date Foreign Priority Date Se: 2002/09/04 First Uses	Jse In Commerce: 2001/10/05 12/06/2002 NONE Jse In Commerce: 2002/11/04

No.			
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE	•	
Design Mark			
	WHA	TAS	SIZE
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		
U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD	•	
	WHATABI	JRGER	FIELD
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		
	3188136	Application Date	04/01/2005
U.S. Registration No.			
	12/19/2006	Foreign Priority Date	NONE

Design Mark	WHATABURGER. STIELD CHRISTI
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06
	providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer L. Elgin/
Name	Jennifer L. Elgin
Date	08/19/2010

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WHATABURGER PARTNERSHIP)
Petitioner,) Cancellation No.:
v.) Mark: WHAT A PIZZA WHAT A) PRICE & Design
WHAT A PIZZA WHAT A PRICE FRANCHISING, LLC) Reg. No.: 3,797,426
Respondent.)

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at 300 Concord Plaza Drive, San Antonio, TX 78216, hereby petitions to cancel Registration No. 3,797,426 for WHAT A PIZZA WHAT A PRICE & Design ("Respondent's Mark), filed on July 6, 2009 and registered on the Principal Register on June 1, 2010, for "pizza" in International Class 030 and "franchising services, namely offering technical assistance in the establishment and/or operation of a commissaries, and in supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets" in International Class 035, by What a Pizza What a Price Franchising, LLC ("Respondent"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,797,426 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees and franchisees are collectively referred to as "Petitioner").

- 2. Petitioner operates or franchises over 700 restaurants under the WHATABURGER name.
- 3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurant services in 1950 and has used the name continuously and without interruption to the present day.
- 4. Petitioner uses the WHATABURGER name not only to identify its restaurant and franchising services, but also as a trademark to identify food products sold at its restaurants and elsewhere.
- 5. Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.
- 6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.
- 7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).
 - (a) Registration No. 652,137 **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.
 - (b) Registration No. 891,082 **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.
 - (c) Registration No. 1,011,927 WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

- (d) Registration No. 1,011,928 **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
- (e) Registration No. 1,014,196 **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.
- (f) Registration No. 1,116,918 **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.
- (g) Registration No. 1,206,344 **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.
- (h) Registration No. 2,160,285 **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.
- (m) Registration No. 2,519,854 **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.
- (n) Registration No. 2,534,527 **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.
- (o) Registration No. 2,757,109 **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.
- (p) Registration No. 2,846,139 **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

- (q) Registration No. 3,185,230 **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.
- (r) Registration No. 3,188,132 **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.
- (s) Registration No. 3,188,136 **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.
- 8. Many of Petitioner's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks,

 Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.
- 9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.
- 10. On information and belief, Respondent has adopted and used Respondent's Mark in connection with pizza and franchising services.
- 11. Respondent is the owner of record of the Reg. No. 3,797,426 for Respondent's Mark, which claims a date of first use in commerce of January 31, 2007 for the goods, "pizza", in International Class 030, and March 19, 2010 for the services, "franchising services, namely, offering technical assistance in the establishment and/or operation of commissaries, and in

supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets" in International Class 035.

- 12. The constructive and actual dates of first use of many of Petitioner's WHATABURGER and WHATA marks precede the filing date of the opposed Registration No. 3,797,426; the issuance date of Registration No. 3,797,426; and the dates of first use identified in the challenged registration.
- 13. The products and services identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks; the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PIZZA WHAT A PRICE so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's products and services, to cause confusion and mistake and to deceive.
- 14. The designation WHAT A PIZZA WHAT A PRICE is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.
- 15. Any defect, objection or fault found with any food product sold or service provided under the designation WHAT A PIZZA WHAT A PRICE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.
- 16. Petitioner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This cancellation is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By:

Christopher Kelly Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W. Washington, D.C. 20006 (202) 719-7000

Attorneys for Whataburger Partnership

Dated: August 19, 2010

13175552.1

EXHIBIT A

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. CL: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

Reg. No. 891,082

Registered May 12, 1970

Renewal Approved Feb. 15, 1990

SERVICE MARK PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)

4600 PARKDALE DRIVE

CORPUS CHRISTI, TX 1841, ASSIGNEE
BY ASSIGNMENT, MERGER AND
CHANGES OF NAME FROM DOBSON,
GRACE W. (UNITED STATES CITIZEN). DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS
CHRISTI, TX

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950, IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

OWNER OF U.S. REG. NO. 652,137.

In testimony whereof I have hereunto set my hand and caused the seal of The Potent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927 Registered May 27, 1975

TRADEMARK SERVICE MARK

Principal Register

WINDLER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of
name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS, FRENCH TRIED POTATOUS, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFÜRTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAU-RANT SERVICES, in CLASS 100 (INT. CL. 42).

Lirst use July 18, 1972; in commerce July 28, 1972. The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972,

M. MERCHANT, Examiner

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42). FIRST USE 7-28-1972; IN COMMERCE 7-28-1972. SER. NO. 72-442,465, FILED 11-29-1972.

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Amended

Reg. No. 1,011,928 Registered May 27, 1975 OG Date Sep. 12, 1995

TRADEMARK SERVICE MARK PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPO-

WHATABURGER, INC. (TEXAS CORPO-RATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE
BY CHANGE OF NAME, ASSIGN-MENT AND MERGER FROM WHATA-BURGER INC. (TEXAS CORPORA-TION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32). FIRST USE 7-18-1972; IN COMMERCE

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS,] CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK-FURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 12, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Prior U.S. Cl.: 46

Reg. No. 1,014,196

United States Patent and Trademark Office

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY
CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON
(UNITED STATES CITIZEN) CORPUS
CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. C.J. AL)

(U.S. CL. 46).
FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER, NO. 73 007.283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

-

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY
MERGER WITH WHATABURGER
SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46). FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

TRADEMARK Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation) 3104 S. Alameda Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979. For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285
Registered May 26, 1998

TRADEMARK PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORA-TION) 4600 PARKDALE DRIVE CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918

AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.
SUSAN LESLIE, EXAMINING ATTORNEY

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORA-TION) 4600 PARKDALE DRIVE CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.
OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285
AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372
Registered Aug. 1, 2000

United States Patent and Trademark Office

TRADEMARK PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVER-

ALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION) 4600 PARKDALE DRIVE CORPUS CHRISTI, TX 784112981 FIRST USE 1-1-2000; IN COMMERCE 1-1-2000. SN 75-698,642, FILED 5-6-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

KATHERINE STOIDES, EXAMINING ATTORNEY

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999. SN 75-647.561, FILED 2-22-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

MITCHELL FRONT, EXAMINING ATTORNEY

Prior U.S. Cls.: 100 and 101

Reg. No. 2,534,527

United States Patent and Trademark Office

Registered Jan. 29, 2002

SERVICE MARK PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE. SUITE 900 WILMINGTON, DE 19801 FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109 Registered Aug. 26, 2003

SERVICE MARK PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE SUITE 900 WILMINGTON, DE 19801

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

RUSS HERMAN, EXAMINING ATTORNEY

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE SUITE 900 WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Prior U.S. Cls.: 100 and 101

Reg. No. 3,185,230

United States Patent and Trademark Office

Registered Dec. 19, 2006

SERVICE MARK PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE, SUITE 900 WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Prior U.S. Cls.: 100, 101, and 107

Reg. No. 3,188,132

United States Patent and Trademark Office

Registered Dec. 19, 2006

SERVICE MARK PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE, SUITE 900 WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136 Registered Dec. 19, 2006

SERVICE MARK PRINCIPAL REGISTER



WHATAPARTNERSHIP, L.P. (DELAWARE LIM-ITED PARTNERSHIP) 300 DELAWARE AVENUE, SUITE 900 WILMINGTON, DE 19801

FOR: PROVIDING STADIUM_FACILITIES_FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to TBMP 2.101(a), on this date I served the foregoing PETITION FOR CANCELLATION upon Registrant and its counsel of record by causing a copy thereof to be deposited in the United States Mail, postage prepaid and addressed as follows:

What A Pizza What A Price Franchising, LLC P.O. Box 540 Vanceburg, KY 41179

> Jeffrey B. Sladkus, Esq. The Sladkus Law Group 1827 Powers Ferry Road Building 6, Suite 200 Atlanta, GA 30339

The 19th day of August, 2010.

Jennifer L. Elgin

Jennifer J. Elgin

EXHIBIT C-2

Trademark Trial and Appeal Board Electronic Filing System. http://esita.usplo.gov

ESTTA Tracking number:

ESTTA244171

Filing date:

10/22/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership LP			
Entity	Partnership	Citizenship	Texas	
Composed Of:	Thomas E. Dobson Hugh D	Thomas E. Dobson Hugh Dobson Lynne Dobson		
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES			

Attorney	Christopher Kelly	
information	WILEY BEIN LLP	
	1776 K Street, N.W.	
	Washington, DC 20006	E 2
5 8 T 8	UNITED STATES	100
0.203	ckelly@wileyrein.com Phone:202-719-7000	

Registration Subject to Cancellation

Registration No	3155106	. 1	Registration (date	10/10	/2006	-
Registrant	Gielow Pickles, Inc 5260 Main St Lexington, MI 48450 UNITED STATES				16	T.	

Goods/Services Subject to Cancellation

Class 029. First Use: 2005/01/26 First Use In Commerce: 2006/02/01
All goods and services in the class are cancelled, namely: Pickles

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
	Tradomination (Orbodon Ela)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER	THE STATE OF THE S	

Design Mark		
	WHATABURGER	
Description of Mark	NONE	+ (10-7)
Goods/Services	Class U046 (International Class 030), First use: First Use: 1950/01/01 F In Commerce: 1953/02/10 HAMBURGER SANDWICH	irst Use

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
	WH/	ATABURGE	R
Description of Mark	NONE		
Goods/Services	In Commerce: 1953/02	onal Class 042). First use: Fi 2/10 ICES AND DRIVE IN REST	rst Use: 1950/01/01 First Use

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		**************************************
	WHA	TABUE	GER
		100	
Description of Mark	NONE	1. 1. F. T.	

HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [
POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND
SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES
Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use
In Commerce: 1972/07/28
RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1978	Foreign Priority Date	NONE
Word Mark	W WHATABURGER	tradica and the same and the same	<u> </u>
Design Mark			
Description of Mark	NONE		
Goods/Services	In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Cluse in Commerce: 1972/07 HAMBURGERS, CHEESER POTATO CHIPS, CORN CI SHAKE BEVERAGES, AND Class U100 (International Clus Commerce: 1972/07/28	lass 029, 030). First use /28 BURGERS, FRENCH FI HIPS,] FRIED PIES, OI) FRANKFURTER SAN lass 042). First use: Fir	NION RINGS, MALT AND DWICHES st Use: 1972/07/28 First Use
	RESTAURANT AND DRIVE	-IN RESTAURANT SE	RVICES

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		H
Goods/Services	Class 029. First use: FI PREPARED HAMBURG THE PREMISES	rst Use: 1973/04/01 First U GER SANDWICH FOR CO	se in Commerce: 1973/08/29 NSUMPTION ON OR OFF

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority	NONE

		Date	The second secon		
Word Mark	WHATAMEAL				
Design Mark	144-14				
Description of Mark	NONE				
Goods/Services	PREPARED MEAL C		Jse In Commerce: 1975/07/01 RGER SANDWICH, FRENCH LON OR OFF THE		
U.S. Registration No.	1206344	Application Date	08/10/1979		
Registration Date	08/24/1982	Foreign Priority Date	NONE		
Word Mark	WHATACATCH		A service the service		
Design Mark					
Description of Mark	NONE				
U.S. Registration		First Use: 1978/10/14 First U ich for Consumption On or C Application Date	se In Commerce: 1979/04/01 Off the Premises		
No.		, pproduct back	JOOE WILLS		
Registration Date	05/26/1998	Foreign Priority Date	NONE		
Word Mark	WHATACHICK'N				
Design Mark					
Description of Mark	NONE				
Goods/Services	Class 030. First use: F chicken sandwich	irst Use: 1984/01/01 First U	se in Commerce: 1984/01/01		
U.S. Registration No.	2335590	Application Date	04/05/1999		
Registration Date	03/28/2000	Foreign Priority Date	NONE		
Word Mark	WHATABURGER				
Design Mark	WHA'	FABURGER			
Description of Mark	NONE				
Goods/Services	Class 042. First use: Fi	irst Use: 1950/01/01 First Us	se in Commerce: 1953/02/10		

restaurant services

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHAT	AKIDS	
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use Clothing for children, namely, onesies, baseball caps and ha	shirts, polo shirts, t-s	

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		**************************************
Design Mark	WHA	TAGU	Y
Description of Mark	NONE		
Goods/Services	Class 042. First use: First restaurant services	Use: 2000/01/01 First U	se In Commerce: 2000/01/01

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		

Design Mark			
19			
		CHETTOTAL PROPERTY	er marriera anal
		WHATA	KIDS
1,			
Description of Mark	NONE	The state of the s	
Goods/Services	Class 042. First use: F restaurant services	First Use: 1999/04/01 First L	lse in Commerce: 1999/04/0
U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX	And the second	
Design Mark			
rig e		a San Alan	
\$2		VHATAL	UVIX
		VHATA(JUMIX
	NONE	VHATAU	JUMIX
Mark	NONE	irst Use: 2000/01/01 First U	
Mark Goods/Services U.S. Registration	NONE Class 016. First use: Fi	irst Use: 2000/01/01 First U	
Mark Goods/Services U.S. Registration No.	NONE Class 016. First use: Fi comic books and children	irst Use: 2000/01/01 First U en's activity books	se In Commerce: 2000/01/0
Mark Goods/Services U.S. Registration No. Registration Date	NONE Class 016. First use: Fi comic books and children 2534527	irst Use: 2000/01/01 First U en's activity books Application Date Foreign Priority Date	se in Commerce: 2000/01/0
Description of Mark Goods/Services U.S. Registration No. Registration Date Word Mark Design Mark	NONE Class 016. First use: Fi comic books and childred 2534527 01/29/2002 WHATAPLACE! WHAT	irst Use: 2000/01/01 First U en's activity books Application Date Foreign Priority Date	se in Commerce: 2000/01/0 03/10/1999 NONE
Mark Goods/Services U.S. Registration No. Registration Date Word Mark Design Mark	NONE Class 016. First use: Fi comic books and childred 2534527 01/29/2002 WHATAPLACE! WHATA	irst Use: 2000/01/01 First U en's activity books Application Date Foreign Priority Date ATASTE	se in Commerce; 2000/01/0 03/10/1999 NONE
Mark Goods/Services U.S. Registration No. Registration Date Word Mark Design Mark	NONE Class 016. First use: Fi comic books and childred 2534527 01/29/2002 WHATAPLACE! WHATA	rst Use: 2000/01/01 First Usen's activity books Application Date Foreign Priority Date ATASTE	se In Commerce: 2000/01/0 03/10/1999 NONE TATASTE!
Mark Goods/Services U.S. Registration No. Registration Date Word Mark Design Mark	NONE Class 016. First use: Fi comic books and childred 2534527 01/29/2002 WHATAPLACE! WHATA	rst Use: 2000/01/01 First Usen's activity books Application Date Foreign Priority Date ATASTE	se in Commerce: 2000/01/0 03/10/1999 NONE

	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		<u></u>
Design Mark			
	WHA	TABUI	RGER
Description of Mark	NONE		
Goods/Services	Class 036. First use: F Charitable fundralsing		Ise In Commerce: 2001/10/0
U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS	- · · ·	·
Description of Mark	NONE		
Goods/Services			se in Commerce: 2002/11/0
	therefor	o for think officers offine gain	
U.S. Registration	therefor	Application Date	01/07/2005
U.S. Registration No. Registration Date	3185230 12/19/2006		01/07/2005 NONE
U.S. Registration No. Registration Date Word Mark	3185230	Application Date Foreign Priority	24
U.S. Registration No. Registration Date	3185230 12/19/2006 WHATASIZE	Application Date Foreign Priority	NONE
J.S. Registration No. Registration Date Word Mark Design Mark	3185230 12/19/2006 WHATASIZE	Application Date Foreign Priority Date	NONE
U.S. Registration No. Registration Date Word Mark	therefor 3185230 12/19/2006 WHATASIZE NONE Class 043, First use: Fir	Application Date Foreign Priority, Date st Use: 1998/00/00 First Use	NONE

Registration Date	12/19/2006	Foreign Priority Date	NONE	The state of the s
Word Mark	WHATABURGER FIE	LD		
Design Mark				
	WARASEA			
Description of Mark	NONE			
Goods/Services		irst Use: 2005/04/06 First U ities for sporting events, ext ents and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CO	RPUS CHRISTI	'
Design Mark	EWHATAI	AN E	
Description of	NONE CORPUS THE	ld ones J	
Mark			
Goods/Services	Class 041. First use: First Use providing stadium facilities for community festival events and	sporting events, exh	se In Commerce: 2005/04/06 ibitions, conventions,

				
Attachments	71667794#TMSN.gif (1 page)(bytes)			5 2
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	72442464#TMSN.gif (1 page)(bytes)		10 1016	
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	75654525#TMSN.gif (1 page)(bytes)			
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78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) WHATAPICKLE.PDF (6 pages)(300662 bytes)				

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	10/22/2008

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WHATABURGER PARTNERSHIP L.P.	4, 1,1 87	
Petitioner,		d d
i de la compania de l	Cancellatio	n No.:
y .	Mark:	WHAT A PICKLE
	Reg. No.:	3,155,106
GIELOW PICKLES, INC.		
Respondent.		

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,155,106 – WHAT A PICKLE for "pickles," in International Class 29, registered on the Principal Register October 10, 2006, by Gielow Pickles, Inc. ("Registrant"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,155,106 and puts forth the following grounds for cancellation:

- 1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Petitioner").
 - 2. Petitioner operates over 700 restaurants under the WHATABURGER name.
- 3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

- Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.
- Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.
- 6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.
- 7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).
 - (a) Registration No. 652,137 WHATABURGER for "hamburger sandwich," registered on the Principal Register September 24, 1957.
 - (b) Registration No. 891,082 WHATABURGER for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.
 - (c) Registration No. 1,011,927 WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
 - (d) Registration No. 1,011,928 WHATABURGER & W Design for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
 - (e) Registration No. 1,014,196 WHATABURGER JR, for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

- (f) Registration No. 1,116,918 WHATAMEAL for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.
- (g) Registration No. 1,206,344 WHATACATCH for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.
- (h) Registration No. 2,160,285 WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 WHATAGUY for "restaurant services," registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 WHATAKIDS for "restaurant services," registered on the Principal Register February 27, 2001.
- (m) Registration No. 2,519,854 WHATACOMIX for "comic books and children's activity books," registered on the Principal Register December 18, 2001.
- (n) Registration No. 2,534,527 WHATAPLACE! WHATATASTE! for "restaurant services," registered on the Principal Register January 29, 2002.
- (o) Registration No. 2,757,109 WHATABURGER for "charitable fundraising services," registered on the Principal Register August 26, 2003.
- (p) Registration No. 2,846,139 WHATABLENDERS for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.
- (q) Registration No. 3,185,230 WHATASIZE for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.
- (r) Registration No. 3,188,132 WHATABURGER FIELD for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

- (s) Registration No. 3,188,136 WHATABURGER FIELD & Design for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.
- 8. Many of Petitioner's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks,

 Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.
- 9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.
- 10. The constructive and actual dates of first use of many of Petitioner's WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,155,106; the issuance date of Registration No. 3,155,106; and the dates of first use identified in the challenged registration.
- 11. On information and belief, Respondent has adopted and uses the designation WHAT A PICKLE in connection with food products consisting of "pickles."
- The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks;

the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PICKLE so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.

- 13. The designation WHAT A PICKLE is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.
- 14. Any defect, objection or fault found with any food product sold under the designation WHAT A PICKLE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.
- Petitoner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

Зу:_____

J. Timothy Hobbs Christopher Kelly

Jennifer Elgin Wiley Rein LLP

1776 K Street, N.W.

Washington, D.C. 20006

(202) 719-7000

Attorneys for Whataburger Partnership, L.P.

Dated: October 21, 2008

12916058.1

EXHIBIT C-3

ESTTA Tracking number:

ESTTA244223

Elling date:

10/22/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership L.I			1.4		-
Entity	Partnership	Citizenship	Texas			The second
Composed Of:	Thomas E. Dobson Hugh Do	bson Lynne Dobso	on		7	
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES			2	i.	

Attorney	Christopher Kelly
information	WILEY REIN LLP
V 1	1776 K Street, N.W.
	Washington, DC 20008
100	UNITED STATES
	ckelly@wileyrein.com Phone:202-719-7000

Registration Subject to Cancellation

Registration No	3389431	Registration date	02/26/2008
Registrant	Agroamerica Corporation Avenida Las Americas 22		
	Ciudad Guatemala, GUATEMALA		

Goods/Services Subject to Cancellation

Class 031. First Use; 2006/12/03 First Use In Commerce: 2006/12/03
All goods and services in the class are cancelled, namely: Fresh fruits; Fresh vegetables

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		The second secon

Design Mark		TABURI	GER
Description of Mark	NONE	**************************************	
Goods/Services	Class U046 (International In Commerce: 1953/02/10 HAMBURGER SANDWIC	9	irst Use: 1950/01/01 First Use
U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
1.1	The state of the s		and a party of the last of the

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Description of Mark	NONE		*
Goods/Services	Class U100 (Internationa In Commerce: 1953/02/1 RESTAURANT SERVICE	0	rst Use: 1950/01/01 First Use AURANT SERVICES

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			***************************************
Description of Mark	NONE		
Goods/Services	PREPARED MEAL CO		ise in Commerce: 1975/07/01 IGER SANDWICH, FRENCH I ON OR OFF THE

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		

eaded Fish Fillets Suitable ass 030. First use: First U epared Fish Sandwich for 30285 26/1998 JATACHICK'N INE ass 030. First use: First U ecken sandwich 25590 28/2000	e for Fish Sandwiches se: 1978/10/14 First U Consumption On or C Application Date Foreign Priority Date	lse in Commerce: 1979/04/0
eaded Fish Fillets Suitable ass 030. First use: First U epared Fish Sandwich for 30285 26/1998 JATACHICK'N INE ass 030. First use: First U ecken sandwich 25590 28/2000	a for Fish Sandwiches se: 1978/10/14 First U Consumption On or C Application Date Foreign Priority Date Application Date Fee: 1984/01/01 First U Application Date Foreign Priority	Ise In Commerce: 1979/04/0 Dif the Premises 03/24/1997 NONE Ise In Commerce: 1984/01/0 04/05/1999
26/1998 IATACHICK'N INE ISS 030. First use: First Useken sandwich IS590 IATABURGER	Foreign Priority Date Se: 1984/01/01 First U Application Date Foreign Priority	NONE Ise In Commerce: 1984/01/0 04/05/1999
IATACHICK'N NE ss 030. First use: First Useken sandwich 25590 28/2000 IATABURGER	Se: 1984/01/01 First U Application Date Foreign Priority	se In Commerce: 1984/01/0
NE ss 030. First use: First Useken sandwich 55590 28/2000	Application Date	04/05/1999
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cken sandwich 85590 28/2000 ATABURGER	Application Date	04/05/1999
28/2000 ATABURGER	Foreign Priority	75 83
ATABURGER		NONE
	-	'
	* *** ********************************	
WHATA	BURGER	
es N/2 First use: First 1 is	o: 1050/01/01 First II	on in Commerce torologie
	se (association rust o	se ii) Collimetta, 1953/02/1
8380	Application Date	05/06/1999
2/2001	Foreign Priority Date	NONE
ATAGUY		
WHA	ΓAGU	Y
	aurant services 8380 02/2001 ATAGUY	8380 Application Date 02/2001 Foreign Priority Date

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01
	restaurant services

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark		VHATA.	KIDS
Description of Mark	NONE		
Goods/Services	Class 042. First use: Fi	irst Use: 1999/04/01 First U	se In Commerce: 1999/04/01

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		A
Design Mark	W	HATA(COMIX
Description of Mark	NONE		
Goods/Services	Class 016, First use: First comic books and children		se In Commerce: 2000/01/01

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

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WHA	YARI	DCFD
TTAAZ	TTUNO	MOTH
		and the feet
NONE		
Class 036. First use: I	First Use: 2001/10/05 First U	Jse In Commerce: 2001/10/0
Charitable fundralsing	services	
2846139	Application Date	12/06/2002
05/25/2004	Foreign Priority Date	NONE
WHATABLENDERS		
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WHA'	TARLENDI	FRE
	- v severall (33)	LIND
NONE		
Class 030 Firetues F	iret Hear 2002/00/04 Einst L	loo In Communication
milk chaka drinka han	on for milk abole distribution	se in Commerce: 2002/11/0
therefor	es for milk snake drinks and	candy flavored toppings
	The second secon	
3185230	Application Date	01/07/2005
		1
12/19/2006	Foreign Priority Date	NONE
WHATASIZE		
XXIVY		
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	AIAS	
		4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
NONE		
Class 043, First use: Fi	rst Use: 1998/00/00 Firet U	se in Commoros 1000/00/er
Class 043, First use: Fi	rst Use: 1998/00/00 First Use:	se in Commerce: 1998/00/00
Restaurant services fea	aturing a prepared meal con	se In Commerce: 1998/00/00 staining french fries and a so
Class 043, First use: Fi Restaurant services fea drink for consumption of	aturing a prepared meal con	se In Commerce: 1998/00/00 staining french fries and a so
Restaurant services fea	aturing a prepared meal con	se in Commerce: 1998/00/00 staining french fries and a so 03/31/2005
Restaurant services fea drink for consumption o	aturing a prepared meal con in or off the premises	taining french fries and a so
	NONE Class 036. First use: I Charitable fundralsing 2846139 05/25/2004 WHATABLENDERS WHA NONE Class 030. First use: F milk shake drinks, bastherefor 3185230 12/19/2006 WHATASIZE	Class 036. First use: First Use: 2001/10/05 First UC Charitable fundralsing services 2846139 Application Date 05/25/2004 Foreign Priority Date WHATABLENDERS WHATABLEND NONE Class 030. First use: First Use: 2002/09/04 First Umilk shake drinks, bases for milk shake drinks and therefor 3185230 Application Date 12/19/2006 Foreign Priority Date WHATASIZE

Design Mark	
	WEATABURGER FIELD
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use in Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD	CORPUS CHRISTI	
Design Mark	EWHATA	BURGE	R. A
Description of Mark Goods/Services			se In Commerce: 2005/04/06
	providing stadium facilities community festival events	for sporting events, exhi and concerts	ibitions, conventions,

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHA	TABUE	CER
	NONE		THE TAXABLE PROPERTY OF THE PARTY OF THE PAR

Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28
	SOFT DRINKS
9	Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28
	HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS, J FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES
	Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28
	RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

1011928	Application Date	11/29/1972
05/27/1975	Foreign Priority Date	NONE
W WHATABURGER	*	
NONE		
In Commerce: 1972/07/2 SOFT DRINKS Class U046 (Internation Use In Commerce: 1972 HAMBURGERS, CHEE POTATO CHIPS, CORN SHAKE BEVERAGES, J Class U100 (Internation In Commerce: 1972/07/2	28 al Class 029, 030). First us 2/07/28 SEBURGERS, FRENCH F N CHIPS,] FRIED PIES, O AND FRANKFURTER SAN al Class 042). First use: Fil	se: First Use: 1972/07/18 First FRIED POTATOES, [NION RINGS, MALT AND NDWICHES rst Use: 1972/07/28 First Use
	NONE Class U045 (Internation in Commerce: 1972/07/2 SOFT DRINKS Class U046 (Internation Use in Commerce: 1972/07/2 HAMBURGERS, CHEE POTATO CHIPS, CORN SHAKE BEVERAGES, Class U100 (Internation in Commerce: 1972/07/2	NONE Class U045 (International Class 032). First use: File Commerce: 1972/07/28

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		

Design Mark		-,	- 4	
	w	HAT	AKIDS	
Description of Mark	NONE			
Goods/Services		n, namely,	shirts, polo shirts, t-	lse in Commerce: 1999/02/16 shirts, dresses, overalls,
U.S. Registration No.	2534527		Application Date	03/10/1999
Registration Date	01/29/2002	·····	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WH	IATATAS		
Design Mark			The state of the same of the s	
	WHAT	'APL	ACE! WHA	ATATASTE!
Description of Mark	NONE			**
Goods/Services	Class 042. First use restaurant services	: First Use	o: 1998/10/11 First U	se In Commerce: 1998/10/1
U.S. Registration No.	1014196		Application Date	11/26/1973
Registration Date	06/24/1975	A 1	Foreign Priority Date	NONE
negistration Date		0.00		
	WHATABURGER J			
Word Mark	WHATABURGER J			
Word Mark Design Mark Description of	WHATABURGER JE NONE			
Word Mark Design Mark Description of Mark Goods/Services	NONE Class 029. First use:	First Use		se In Commerce: 1973/08/29 NSUMPTION ON OR OFF
Word Mark Design Mark Description of Mark	NONE Class 029, First use: PREPARED HAMBL	First Use		se In Commerce: 1973/08/29 NSUMPTION ON OP OFF

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WATTA.PDF (6 pages)(301963 bytes)	

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/	All Control	*		3.4.7	+-1	
Name	Christopher Kelly		*****	-	,	<i>y</i> .	
Date	10/22/2008						14 16

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WĤA	TABURGER PARTNERSHIP	L.P.		
	Petitioner,		3 20 2	5) Em
2 9) Ca	ncellation No.:	
а п	v		ark: WATT	A
) Re	g. No.: 3,389,4	31
AGR	OAMERICA CORPORATION	.)	e * 25	
att un Rij	Respondent.			2**

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,389,431 – WATTA for "fresh fruits; fresh vegetables," in International Class 31, registered on the Principal Register February 26, 2008, by Agroamerica Corporation ("Registrant"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,389,431 and puts forth the following grounds for cancellation:

- 1. Whataburger Partnership is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Petitioner").
 - 2. Petitioner operates over 700 restaurants under the WHATABURGER name.
- 3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

- Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.
- Petitioner has developed a family of WHATA marks to identify its food products,
 and collateral products and services, such as printed materials, clothing and stadium services.
- 6. Based on Petitioner's extensive, exclusive and continuous use of its
 WHATABURGER and WHATA marks in connection with restaurant services, food products
 and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have
 come to be recognized among the consuming public as designators of origin with respect to said
 services and products.
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- (h) Registration No. 2,160,285 WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 WHATAGUY for "restaurant services," registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 WHATAKIDS for "restaurant services," registered on the Principal Register February 27, 2001.
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- (n) Registration No. 2,534,527 WHATAPLACE! WHATATASTE! for "restaurant services," registered on the Principal Register January 29, 2002.
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- (s) Registration No. 3,188,136 WHATABURGER FIELD & Design for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.
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 Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.
- 9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.
- 10. The constructive and actual dates of first use of Petitioner's WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,389,431; the issuance date of Registration No. 3,389,431; and the dates of first use identified in the challenged registration.
- 11. On information and belief, Respondent has adopted and uses the designation WATTA in connection with food products consisting of "fresh fruits" and "fresh vegetables."
- 12. The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks.

The products in the challenged registration are not restricted as to types of customers and channels of trade.

- 13. The designation WATTA so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.
- 14. The designation WATTA is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.
- 15. Any defect, objection or fault found with any food product sold under the designation WATTA would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.
- 16. Petitoner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

Ву: _____

J. Timothy Hobbs Christopher Kelly

Jennifer Elgin

Wiley Rein LLP

1776 K. Street, N.W.

Washington, D.C. 20006

(202) 719-7000

Attorneys for Whataburger Partnership, L.P.

Dated: October 22, 2008

12905237.1

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050094
Party	Plaintiff Whataburger Partnership L.P.
Correspondence Address	Christopher Kelty WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Other Motions/Papers
Filer's Name	Christopher Kelly
Filer's e-mail	ckelly@wileyrein.com
Signature	/ck/
Date	11/03/2009
Attachments	DOC110.PDF (2 pages)(75383 bytes)

EXHIBIT B

WATTA

Cancellation No. 92/050,094 Reg. No.: 3,389,431

Mark:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WHATABURGER PARTNERSHIP

AGROAMERICA CORPORATION

Petitioner,

STIPULATED MOTION REQUI	ESTING AMENDMENT WITH CONSENT AND ALL OF CANCELLATION PROCEEDING
Comes now Respondent, Agroan	nerica Corporation ("Respondent"), pursuant to 37
C.F.R. § 2.133, with the consent of Petit	ioner, Whataburger Partnership ("Petitioner"), and
hereby requests amendment of the identi	ification of goods in Reg. No. 3,389,431 – WATTA such
that the identification is narrowed to read	d "fresh fruits and vegetables and not sold through
restaurants, including quick and full-serv	vice restaurants."
Contingent upon the Board's acc	eptance of Respondent's request for amendment set
	Soard dismiss Cancellation No. 92/050,094. ly submitted,
WHATABURGER PARTNERSHIP	AGROAMERICA CORPORATION
Ву:	By: SM
Christopher Kelly	Albert Bordas, Esq.
Jennifer Elgin WILEY REIN LLP	Albert Bordas, P.A.
1776 K Street, N.W.	Patent, Trademark, and Copyright Law 5975 Sunset Drive, Suite 607
Washington, D.C. 20006	Miami, Florida 33143
Attorneys for Petitioner	Attorneys for Respondent
Dated: 4/3/09	Dated: 001.29, 2009
12983933.1	

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2009 I served the foregoing STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND CONTINGENT DISMISSAL OF CANCELLATION PROCEEDING by causing a copy thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Albert Bordas, Esq. Albert Bordas, P.A. Patent, Trademark and Copyright Law 5975 Sunset Drive, Suite 607 Miami, Florida 33143

Christopher Kelly

UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board P.O. Box 1451
Alexandria, VA 22313-1451

mc

Mailed: November 10, 2009

Cancellation No. 92050094

Whataburger Partnership L.P.

V.

Agroamerica Corporation

On November 3, 2009, the parties filed registrant's proposed amendment to its Registration No. 3389431, with petitioner's consent, and petitioner's withdrawal of the petition to cancel, contingent upon entry of the amendment.

By the proposed amendment registrant seeks to change the identification of goods from "Fresh fruits; Fresh vegetables" to "fresh fruits and vegetables not sold through restaurants, including quick and full-service restaurants."

Inasmuch as the amendment complies with all of the procedural requirements of Trademark Rule 2.173, it is clearly limiting in nature, and petitioner consents thereto, it is approved. See Trademark Rule 2.133(a).

The amendment will be forwarded to the Post Registration Branch of this Office for appropriate action in accordance with Section 7(e) of the Trademark Act.

The contingency in petitioner's withdrawal having now been met, the petition to cancel is dismissed in accordance with the agreement between the parties.

By the Trademark Trial and Appeal Board